

**IN THE HIGH COURT OF JUDICATURE AT
PATNA**

CWJC No.13476 of 2008

**Jaideo Mahto, son of late Siya Mahto,
resident of village Sanjat, P.S. Bhagwanpur,
District Begusarai. At present posted and working
as Block Education Extension Officer, Shekhopur
Sarai (Barbigha-2), District Sheikhpura
Petitioner. Versus**

- 1. The State of Bihar**
- 2. The State Information Commission, Fourth
Floor, Suchna Bhawan, Bailey road, Patna
through its Registrar.**
- 3. Sri P.N. Narayan, son of not known, the State
Information Commissioner, Fourth Floor, Suchna
Bhawan, Bailey Road, Patna.**
- 4. The Deputy Secretary-cum-Joint Registrar,
State Information Commission, Suchna Bhawan,
Bailey Road, Patna.**
- 5. The Director, Primary Education, New
Secretariat, Patna.**
- 6. The District Superintendent of Education,
Shekhpura.**

7. Shashi Bhushan Kumar, son of Nand Kishore Prasad, resident of village Baghi, P.S. Chakwai, District Nawada ..Respondents. For the petitioner : M/s Shivendra Kishore and Md. Anisur Rahman, Advocates.

For the respondent- : Mr. Lalit Kishore, Sr. Advocate with -Commission Mrs. Binita Singh, Advocate. For the respondent- : Government Pleader No.12 -State

PRESENT

HON'BLE MR. JUSTICE S.N. HUSSAIN

S.N. Hussain, J. This writ petition has been filed on behalf of the petitioner J. challenging order dated 21.07.2008 (Annexure-12) by which the State Information Commissioner, Patna (respondent no.3) imposed a fine of Rs.25,000.00 against the petitioner and asked the Director, Primary Education Bihar (respondent no.5) to take action against the petitioner in accordance with law and to inform the State Information Commission, Patna (respondent no.2) about the same by 31.10.2008.

2. The petitioner is Block Education Extension Officer, Shekhopur Sarai (Barbigha-2), in the district of Sheikhpura. Learned counsel for the petitioner submitted that during his posting he received a letter from the Commission dated 22.01.2008 (Annexure-2) directing him to give all the required informations to respondent no.7, who was applicant before the Commission, by 08.02.2008 and fixing the next date for hearing the case bearing Case No.3063 of 2007-08 on 12.02.2008 on which date the petitioner was directed to be present in court.

3. Learned counsel for the petitioner further submitted that the petitioner learnt that although respondent no.7 had never filed any application for any information required by him before the petitioner and he straightaway filed the aforesaid Case No.3063 of 2007-08 before the Commission for seeking the required information. However, in

compliance of the said order of the Commissioner, the petitioner supplied the required information to respondent no.7 (applicant before the Commission) vide his letter dated 02.02.2008 (Annexure-3).

4. It was further claimed that subsequently a letter dated 04.03.2008 (Annexure-4) was received by the petitioner which was sent by the Pramukh-cum-Chairman of Block Teacher Employment Committee, Shekhopur on the direction of the Commission stating that the applicant (respondent no.7) had raised objection with respect to the appointment of Sri Narayan Prasad Singh as teacher on the basis of his certificate declaring him as visually impaired person and requested that the medical certificate of the aforesaid teacher be verified by the Medical Board. Thereafter the petitioner vide letter dated 06.03.2008 (Annexure-5) requested the Chief Medical Officer, Sheikhpura for examination of the said teacher by the Medical Board and on that basis the Chief Medical officer vide order dated 07.04.2008 (Anneuxre-6) constituted a Medical Board which examined the said teacher Sri Narayan Prasad Singh and found him to be handicapped by vision and accordingly the Chief Medical Officer informed the petitioner vide his letter dated 16.04.2008 (Annexure-7).

5. In the meantime, the petitioner appeared before the Commission on 19.03.2008 and produced a copy of the information sent by him to respondent no.7 on 02.02.2008 (Annexure-3). However, the Commission vide order dated 27.03.2008 (Annexure-8) held that although the petitioner had supplied information to respondent no.7, but in the said information copy of the handicap certificate issued by the government for the said teacher had not been sent and hence he was inflicted a fine of Rs.8,000.00 and was directed to supply the said handicap certificate issued by the government to respondent no.7 by 02.05.2008 and inform the Commission about the same.

6. The applicant (respondent no.7) had raised objection that while selecting teachers the handicap certificate issued by the government was not obtained from the candidates and hence it was observed that on the basis of the reply of the petitioner action under section 20 (2) of the Right to Information Act, 2005 (hereinafter referred to as 'the Act' for the sake of brevity) shall be considered. Learned counsel for the petitioner also averred that in compliance of the said order of the Commission, the petitioner sent letter dated 28.04.2008 (Annexure-9) to respondent no.7 along with certified copy of the handicap certificate issued by the Civil Surgeon-cum Chief Medical Officer, Sheikhpura dated 16.04.2008 (Annexure-7). It was also argued that on the next date fixed in the case i.e.

12.05.2008, the petitioner appeared before the Commission and submitted his aforesaid letter, but vide order dated 19.05.2008 (Annexure-10) the said authority held that the petitioner had not complied the order of the Commission and hence a fine of Rs.23,000.00 was inflicted upon him and he was asked to submit his show-cause by the next date.

7. In compliance of the said order, the petitioner submitted his show-cause dated 26.06.2008 (Annexure-11) before the Commission, after considering which the Commission did not find it sufficient and satisfactory and hence vide impugned order dated 21.07.2008 (Annexure-12), the Commission enhanced the fine to Rs.25,000.00 and directed the Director, Primary Education, Human Resources Development Department to enquire into the matter with regard to the alleged illegal appointment of Sri Narayan Prasad Singh on the post as visually impaired person and inform the Commission by 31.10.2008.

8. In the aforesaid circumstances, the petitioner raised a point that respondent no.7 neither applied before the petitioner nor he filed any appeal under section 9 of the Act against the petitioner for incomplete information, etc. and after receiving information from the Commissioner, the petitioner had immediately taken all necessary steps and supplied all the required informations to respondent no.7 within the time granted by the Commission sending copies thereof to the Commission, but this aspect of the matter as well as the explanation of the petitioner were not considered, although it clearly showed that there was no question of petitioner persistently failing to act as per the requirement of law. It was also stated that the impugned order is violative of the provisions of law and is directly in the teeth of a decision of this court in case of Arbind Prasad Singh vs. The State of Bihar & Ors., reported in 2010 (3) P.L.J.R. 337.

9. On the other hand, learned counsel for the State and its authorities stated that although no application under the proforma was filed before the petitioner by the complainant who was a blind person and hence he filed an application directly before the Commission. He further submitted that the Commission had specific authority and power under the Act to take steps on such applications filed before it and hence it took all necessary steps in that regard as required in law directing the petitioner to furnish the required information to the applicant. The entire order sheet of the Commission has been annexed as Annexure-A to the counter affidavit. It was also stated that order dated 22.01.2008 (Annexure-2) was passed by the Commission for giving complete

information, as required, to respondent no.7, but vide letter dated 02.02.2008 (Annexure-3) the petitioner supplied only the list of handicapped employees and no other information was supplied as per the direction of the Commission.

10. Learned counsel for the respondents further submitted that when the Commission vide letter dated 27.03.2008 (Annexure-8) directed the petitioner to supply copy of the handicap certificate of Sri Narayan Prasad Singh on the basis of which he was appointed as teacher, the petitioner vide letter dated 28.04.2008 (Annexure-9) supplied the certificate of the Chief Medical Officer dated 16.04.2008 (Annexure-7) but that was much subsequent to the appointment of the said teacher and neither any certificate on the basis of which the said teacher was appointed, was supplied to respondent no.7 nor any information was given to respondent no.7 that the said teacher was appointed without obtaining any handicap certificate from the State Government. He further averred that petitioner had full information and knowledge of the entire procedure but he did not comply the specific orders of the Commission, although it was mandatory as per the provision of section 20 of the Act. It was also stated that the impugned order had been passed after issuing notices and considering the show- cause submitted by the petitioner and hence it cannot be said that there is any defect in the process adopted by the Commission.

11. Considering the entire facts and circumstances of the case as well as the pleadings of the parties including the materials on record, it is quite apparent that a complainant had right to know whether earlier appointees were better qualified and for that purpose the provision of the Act has been provided by the law makers according to which withholding any such information is palpably illegal and also amounts to mischief. The provisions of the Act clearly specify that an aggrieved person may apply for such information from the department concerned and also authorize the Commission to accept direct applications from such persons. In the said circumstances, filing of application by respondent no.7 before the Commission cannot be said to be illegal or improper. Furthermore, the impugned order was passed by the authority after fully observing the procedure in accordance with law including issuance of notice, giving opportunity to the petitioner and considering his show cause.

12. From order dated 22.01.2008 (Annexure-2) it is quite apparent that the Commission had specifically directed the petitioner to give full information to respondent no.7 as required by him, but from letter dated 02.02.2008 (Annexure-3) sent by the petitioner

to respondent no.7, it is quite apparent that only a list of appointees was given in the said letter but no further details with respect thereto were given. Hence, the Commission had to issue fresh directions to the petitioner vide order dated 27.03.2008 (Annexure-8) asking him to supply handicap certificate of the Government of Bihar on the basis of which Sri Narayan Prasad Singh was appointed as teacher and also to report as to whether he was appointed without any such certificate. In reply thereto, the petitioner along with letter dated 28.04.2008 (Annexure-9) supplied to respondent no.7 a copy of certificate issued by the Civil Surgeon-cum-Chief Medical Officer, Sheikhpura dated 16.04.2008 (Annexure-7) although the said certificate having been issued much subsequent to the appointment of the said teacher cannot be legally said to be the basis on which he was appointed.

13. In the said circumstances, it is quite apparent that the petitioner neither supplied any copy of the handicap certificate issued by the government on the basis of which the said teacher was appointed nor he made any such statement that the said teacher was appointed without any handicap certificate issued by the government. Thus it is absolutely clear that the petitioner for reasons best known to him concealed the necessary facts with respect to the main issue involved, namely the appointment of teacher without any handicap certificate as required in law and in the process the petitioner did not even comply the specific repeated directions of the Commission and hence the Commission was quite justified in passing the impugned order against the petitioner.

14. This court does not find any illegality in the impugned order of the State Information Commissioner, Patna (respondent no.3) nor does it find any merit in this writ petition, which is accordingly dismissed.

Patna High Court, (S.N. Hussain, J.) Dated 09.09.2010

N.A.F.R./Harish